S.B.Civil Writ Petition NO.367/2005

Kanwar Bhan

vs

Smt.Sushil Kumar & Ors.

DATE OF ORDER : - 20.1.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. C.S.Kotwani, for the petitioner.
Mr.R.K.Thanvi, for the respondents.

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Heard learned counsel for the parties

The petitioner is aggrieved against the order dated 8th Nov., 2004 by which the petitioner-defendant's application for amendment of the written statement, which was filed before the first appellate court was dismissed by the first appellate court.

The defendants sought amendment of the written statement on the ground that during the pendency of the appeal, the appellant-defendant came to know that plaintiff has some more properties,which are mentioned in the proposed amendment. The said application of the petitioner was dismissed by the first appellate court after considering the reply, which has been filed by the plaintiff-respondents. According

to learned counsel for the petitioner, the first appellate court examined the merit of the appeal and even went to the extent of holding that the plaintiff is the best judge to decide the suitability of his requirement and, therefore, the first appellate court has committed serious error of law and exceed its jurisdiction. Learned counsel for the petitioner relied upon the judgments delivered in the case of N.K.Jain Vs. Kanhaiya Lal reported in 1990 RLR 41 and Rakesh Gupta Vs. Ahmed Farooq reported in 1992(2) RLW 398.

I considered the submissions of learned counsel for the petitioner and perused the reasons given in the impugned order. The first appellate court very carefully examined the facts of the case and, thereafter, considered the amendment sought by the appellant-petitioner and reply filed by the respondent. The first appellate court has not decided any point on merit in the impugned order. The first appellate court only examined what is the legal position on the issues, which are relevant for the purpose of deciding whether the amendment sought is just and proper and required to be allowed to decide the controversy between the parties. The first appellate court categorically held that the amendment is not necessary for just and correct decision of the appeal.

In view of the above, the judgment relied upon by learned

counsel for the petitioner has no application to the facts of this case and the first appellate court has not committed any error.

In view of the above, the writ petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-